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INTERVIEW

Impact of New Bankruptcy Law Tops Committee's Concerns

An Interview with Judge Barbara M.G. Lynn

Judge Barbara M.G. Lynn was nominated to the U.S. District Court for the Northern District of Texas in 1999. Judge Lynn has served as a member of the Judicial Conference Committee on the Administration of the Bankruptcy System since 2003, and was appointed Committee chair in 2007.

Judge Barbara M.G. Lynn (N.D. Tex.)

Q: On April 20, 2005, the President signed the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. How has the Act impacted the number of bankruptcy filings and the work of bankruptcy judges?

A: Although bankruptcy filings greatly decreased after the Act became effective, and remain significantly below pre-Act filing levels, bankruptcy filings have been slowly but steadily increasing. The Bankruptcy Committee is concerned about early indications that, even though bankruptcy filings have not yet returned to their pre-Act levels, the work of bankruptcy judges and court staff on a per-case basis has increased substantially under the 2005 Act compared with their work under the prior bankruptcy law. The Act created more than 35 types of new motions,

*See **Interview** on page 8*

Congress Still Working on Appropriations – "CR" Extended

In the absence of enacted appropriations for FY 2008, the Judiciary, as well as the rest of the federal government, has been operating under a continuing resolution (CR). The President signed the FY 2008 Defense appropriations bill which included language extending the current CR through Friday, December 14.

To date, Congress has sent two (of 12) spending bills to the President for his signature. He signed one into law (Defense) and vetoed the other on spending grounds (Labor-Health and Human Services-Education). Overall, Congress and the President are $22 billion apart on FY 2008 spending and the President has said he will veto other appropriations bills that exceed his overall budget total for FY 2008, or that contain policy provisions the Administration opposes. It appears it is Congress's goal to have all 12 appropriations bills completed and signed by the President prior to Christmas, although it is possible that spending and policy differences between Congress and the White House could delay final action on some bills beyond that date.

INSIDE

A Decade of Change in the Federal Courts Caseload: Fiscal Years 1997-2006

Supreme Court decisions, shifting Administration priorities, new legislation, and numerous other factors caused the composition of the federal courts' caseload to change over the past decade. Between September 30, 1997 and September 30, 2006, appeals court filings steadily climbed, district court caseloads fluctuated, and bankruptcy filings hit a record high before tumbling following the enactment of sweeping bankruptcy reform legislation. What are the identifiable caseload trends and what are the forces behind the changing nature of the federal courts' caseload?

Appeals

Filings in the 12 regional courts of appeals rose 27 percent between FY 1997 and FY 2006, achieving a record high number in FY 2005 when there were 68,473 appeals filed.

Criminal Appeals

In the courts of appeals, the Supreme Court's 2005 decision in *U.S. v. Booker* triggered a dramatic temporary increase in criminal appeals. Between FY 1997 and FY 2004, the number of criminal appeals had climbed 19 percent. After the *Booker* decision on the federal sentencing guidelines there was a 28 percent rise in criminal appeals. By the end of FY 2006, filings had subsided 5 percent, but their total was still 22 percent above the pre-*Booker* 2004 totals.

Appeals of drug cases and cases involving firearms and explosives historically have ranked among the largest categories of criminal appeals. Starting in FY 2006, there was a newcomer to the group, immigration appeals. These cases accounted for just 3 percent of all criminal appeals in FY 1997, but by FY 2005 the annual total rose nearly 700 percent from 367 immigration appeals to 2,896 immigration appeals. Immigration appeals remain the second-largest category of criminal appeals.

Civil Appeals

Throughout the ten-year period, civil appeals accounted for the greatest proportion of appeals filed. Prisoner petition appeals, accounting for approximately half of all civil appeals each year between FY 1997 and FY 2006, grew 4 percent, even as all other types of civil appeals fell.

Administrative Agency Appeals

Administrative agency appeals nearly tripled in the last decade, rising from 4,412 appeals in FY 1997 to 13,102 in FY 2006. Appeals of administrative decisions involving the Board of Immigration Appeals accounted for nearly all of this increase. These appeals are challenges to the decisions of the Board and generally pertain to people seeking to immigrate to the U.S. or to change their immigration status. Appeals of Board decisions rose initially in response to the Attorney General's reorganization of the Board in 2002, when new case review guidelines and processing time standards were instituted. The growth continued as the Board received more cases each year through 2004, and the rate of challenges to Board decisions increased.

Original Proceedings

A change in how certain cases are reported, prisoners looking to reduce their sentences, and the continued effects of Supreme Court decisions in *Blakely v. Washington*, and *Booker*, contributed to a sevenfold increase in original proceedings filings between FY 1997 and FY 2006. Original proceedings rose from 814 to 5,458 cases in that time.

When certain types of filings, including pro se mandamus petitions for which filing fees were not paid, began to be recorded as original proceedings requiring judicial review on the merits, a surge occurred. Filings rose 349 percent in FY 1999.

In FY 2000, the Supreme Court's *Apprendi v. New Jersey* decision led many prisoners seeking to reduce their sentences to file habeas corpus motions. These filings peaked at a record high of 5,876 petitions in FY 2001 as prisoners rushed to file before a one-year deadline. Filings fell for two subsequent years, until a 13 percent increase in FY 2004, a 23 percent rise in FY 2005, and a 9 percent increase in FY 2006, all due to prisoners filing motions to vacate judgment in response to the Supreme Court's decisions in *Blakely* and *Booker*.

U.S. District Courts

Criminal Caseload

Criminal cases rose 34 percent between FY 1997 and FY 2006. In that decade, there were increases in prosecutions of immigration, drug, firearms and explosives, and sex crimes—and filings for all four categories reached

their highest historic levels. The growth stemmed from Department of Justice initiatives specifically targeting these types of offenses and also from new legislation that amended sex crime laws to include crimes committed using electronic media.

Drug case filings increased 41 percent as the Department of Justice directed additional resources to the southwestern border of the United States and to High Intensity Drug Trafficking Areas. By FY 2002, one-third of all drug cases were attributed to the five southwestern border districts. The Comprehensive Methamphetamine Control Act, enacted in 1996, also contributed to the increase in drug filings.

Immigration cases soared 145 percent from FY 1997 to FY 2006 as Congress increased funding to hire more border patrol agents and the DOJ prosecuted a larger number of individuals crossing the southwestern border illegally. Over the past decade, the volume of immigration case filings has increased 182 percent in the five border courts. In FY 1997, the southwestern border districts accounted for 60 percent of all immigration case filings in the nation. By FY 2006, this number had increased to 70 percent.

Firearms and explosives cases rocketed upward 153 percent in the last decade, reaching record levels in FY 2004. Contributing factors in the rise were the implementation by law enforcement agencies nationwide of programs modeled on Project Exile and Operation Ceasefire; the prosecution of more firearms violations under federal laws where the penalties were more severe than under state laws; and the hiring of 94 U.S. assistant attorneys, part of the Project Safe Neighborhood initiative, to focus on the prosecution of firearms law violations.

Civil Caseload

Sporadic surges in civil filings have occurred over the past ten years. In FY 2001 there was a jump in personal injury/product liability cases, and again in FY 2004 as filings for this type of case climbed. Filings increased in FY 2006, as 14,000 asbestos cases were added to the docket of the Eastern District of Pennsylvania.

Personal injury cases increased 20 percent over the last decade, although there was a 45 percent dip in cases from FY 1997 to FY 2001. This was due to a slowdown in the number of breast implant cases filed. Then in FY 2002, personal injury case filings soared 98 percent fueled by a large number of "friction product" cases alleging injuries from asbestos and involving the big three automakers and Honeywell International. In addition, a large number of cases involving the Bayer Company's drug Baycol were transferred to the District of Minnesota. In FY 2004, case filings rose in response to litigation for diet drugs in the Eastern District of Pennsylvania and for welding rods containing manganese in the Northern District of Ohio. FY 2006 saw a substantial jump in filings related to asbestos in the Eastern District of Pennsylvania.

In addition to personal injury cases, civil case filings consist primarily of prisoner petitions, contract actions and civil rights cases. Prisoner petitions decreased 13 percent from FY 1997 to FY 2006, influenced by three court rulings and two new laws. The Prison Litigation Reform Act and the Antiterrorism and Effective Death Penalty Act, both enacted in 1996, dampened the likelihood that prisoners would file new petitions. Nonetheless, from FY 1998 to FY 2001, filings increased steadily, partly because petitioners affected by the Supreme Court's 2000 *Apprendi* ruling had a one-year filing deadline. After the deadline for filing expired, prisoner petitions fell, hitting their lowest point in ten years in FY 2003. The Court's ruling in *Blakely* contributed to a rise in filings of motions to vacate sentence, and the 2005 decision in *Booker* led to another surge. By FY 2006, however, filings had decreased to levels seen prior to the *Booker* ruling.

Contract case filings increased 31 percent from FY 1997 to FY 2000 largely due to an intensified effort by the Department of Education to collect on defaulted student loans, but after FY 2001, as the number of student loan filings decreased, the number of contract cases plummeted. It wasn't until FY 2006 that contract case filings again increased, rising 7 percent as insurance case filings soared in districts impacted by Hurricane Katrina.

Firearms and explosives cases rocketed upward 153 percent in the last decade, reaching record levels in FY 2004.

***A Decade** continued on page 4*

A Decade *continued from page 3*

Diversity filings increased 45 percent from FY 1997 to FY 2006. Although filings tapered off after the amount in controversy requirement for diversity jurisdiction cases was increased in 1997, cases rebounded in FY 2001 through FY 2004 with several high profile personal injury/product liability cases centralized by the Judicial Panel on Multidistrict Litigation. In FY 2006, diversity filings related to asbestos caused a 29 percent increase in total filings.

U.S. Bankruptcy Courts

Following declines in FY 1999 and FY 2000, bankruptcies reached record levels in four of the next six years. Although dipping slightly in FY 2004, filings surged to 1.78 million in FY 2005 as petitioners anticipated enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA) of 2005.

The rise in bankruptcy filings between FY 1997 and FY 1998 most likely was linked to high levels of consumer debt as a percentage of personal income. Following four years of increases to record heights, filings fell 6 percent in FY 1999 and 7 percent in FY 2000. Filings climbed again in FY 2001, FY 2002, and FY 2003. These petitions most likely arose from high consumer debt combined with slowing economic growth during this period. FY 2005 saw bankruptcy filings soar to an all-time high before BAPCPA took effect on October 17, 2005. In the months after BAPCPA was implemented, filings were very low, rising gradually from 15,000 per month to approximately 60,000 per month by the end of fiscal year 2006—which is still well below the number of pre-BAPCPA filings.

The pattern of bankruptcy filings has affected the workload of the bankruptcy courts. The courts received more cases than they were able to terminate in seven out of the ten years of the period. Following BAPCPA, there has been a dramatic increase in the amount of work per bankruptcy petition, as motions per case have increased 59 percent, orders filed per case have risen 35 percent, and notices sent have grown 41 percent.

House Joins Senate with Bill on Judges' Pay

The Federal Judicial Salary Restoration Act of 2007, H.R. 3753, was introduced in the House on October 4, 2007, by Representative John Conyers (D-MI), chair of the House Judiciary Committee. There are now bills in both the Senate and the House that would increase and thereby restore the salary of federal judges.

The many co-sponsors of the bill draw from both sides of the aisle, with both the Majority Leader, Representative Steny Hoyer (D-MD), and the Minority Leader, Representative John Boehner (R-OH). In addition, as of press time, 20 cosponsors supported the bill: Representatives Howard Berman (D-CA), Spencer Bachus (R-AL), Judy Biggert (R-IL), Chris Cannon (R-UT), Steve Cohen (D-TN), Henry Cuellar (R-TX), Artur Davis (D-AL), Anna G. Eshoo (D-CA), Tom Feeney (R-FL), Jim Gerlach (D-PA), Louie Gohmert (R-TX), Jerry Lewis (D-CA), Daniel E. Lungren (R-CA), Jerry Moran (D-KS), Mike Pence (R-IN), C.A. Dutch Ruppersberger (D-MD), Stephanie Herseth Sandlin (D-SD), Adam Schiff (D-CA), Debbie Wasserman Schultz (D-FL) and Melvin Watt (D-NC).

H.R. 3753 would restore years of lost compensation, increasing the pay of U.S. court of appeals judges to $247,000 and to $233,500 for U.S. district judges. The legislation would adjust the pay of the Chief Justice of the Supreme Court to $299,800 and the pay of associate justices of the Supreme Court to $286,900. The bill also would repeal Section 140 of P.L. 97-92. Under Section 140, specific congressional approval is required to permit judges to receive a cost-of-living adjustment as provided annually under the Ethics Reform Act of 1989.

Federal judges have been denied six cost-of-living increases since 1993. As a result, a district court judge on the bench since 1993 failed to receive a total of $208,500 in pay. An appellate judge lost even more in pay.

Supervision Looks to Long-Term Change

The majority of federal offenders comply with the terms of supervision imposed by the court following their conviction. Over a quarter of offenders, however, will have supervision revoked and return to the more highly structured supervision of prison. How do offenders avoid revocation and successfully complete supervision and what part do federal probation officers play in that success?

As of September 30, 2006, there were over 114,000 persons under post-conviction supervision in the federal court system."The desired outcomes of supervision are the execution of the sentence and the protection of the community by reducing the risk and recurrence of crime, and maximizing offender success during the period of supervision and beyond," said John Hughes, assistant director of the Office of Probation and Pretrial Services at the Administrative Office. "The goal in all cases is the successful completion of the term of supervision, during which the offender commits no new crimes; is held accountable for victim, family, community and other court-imposed responsibilities; and prepares for continued success through improvements in his or her conduct and condition."

The majority of offenders under supervision have been convicted of drug-related offenses, with the second largest group of offenders under supervision for property offenses—including burglary, larceny, embezzlement, fraud, forgery and counterfeiting—followed by firearms offenses, and violent crimes such as homicide, robbery and assault. An increasing number of the offenders entering federal supervision have prior state and local criminal records and have been exposed to a lengthy prison term based on their federal convictions.

"A probation officer's goal is to facilitate long-term positive changes in defendants and offenders through proactive interventions," said Chief Probation Officer David Keeler in the Eastern District of Michigan. Keeler also chairs the Judiciary's Chiefs Advisory Group. "We certainly know that with the criminal backgrounds of some offenders, strict monitoring is the best way to protect the community. However, with most offenders, we can protect the community through the use of controlling and correctional strategies designed to manage the risk and still facilitate the positive changes for long term success."

Throughout their terms of supervision, offenders are closely

Long-Term Change *continued on page 11*

Change Talk and Treatment Turn Around Lives

"Everyone has the opportunity to turn their lives around," says Melissa Cahill, U.S. Probation Officer in the Eastern District of Missouri. But research has shown that certain factors—called criminogenic needs—put offenders under supervision at greater risk of revocation. Among the factors are substance abuse, criminal peers, anti-social values, low self-control, dysfunctional family ties, and a criminal personality.

"Our long-term goal," said Cahill, "is to try to change overall behavior. Research helps us better identify those people at risk of revocation, to address specific criminogenic needs, and to intervene." Evidence-based practices—practices proven to consistently produce specific results in offender supervision—are at the heart of such intervention and in reducing recidivism.

In fiscal year 2007, probation and pretrial services offices in 16 districts nationwide were funded to implement evidence based practices. Practices include offender workforce development, cognitive-behavioral treatment, risk/needs assessment, re-entry court, and motivational interviewing. These practices were developed through reviews of literature and discussions with experts in the field, as well as feedback from various districts.

Both Cahill's and David Keeler's districts use motivational interviewing, known as MI. MI builds on an offender's internal motivation to change their behavior and has been shown to be especially effective in substance abuse treatment. Keeler calls MI "change talk," because it relies on the offender's own belief in his or her ability to change.

"With MI, it's not the probation officer saying, 'Here's what you need to do,' " Keeler explains. "It's getting the offender saying, 'Here's what I need to do.' And we give them the tools to do that."

New Privacy Rules Imminent, Another Privacy Change Contemplated

New rules providing privacy protection for case files posted online in the federal district, bankruptcy and appellate courts are scheduled to take effect December 1, 2007. Some of the rules represent a change in Judicial Conference policy.

Meanwhile, a Judicial Conference committee is studying a related privacy issue: Whether courts should restrict Internet access to plea agreements in criminal cases, which may contain information identifying defendants who are cooperating with law enforcement investigations.

The new rules were proposed by the Judicial Conference in accordance with the E-Government Act of 2002, which requires that each court make publicly available online any document filed electronically. The rules require parties to redact certain personal information from each filing.

The Act required the Supreme Court to prescribe rules "to protect privacy and security concerns related to electronic filing of documents and the public availability . . . of documents filed electronically."

The new privacy rules include Civil Procedure Rule 5.2, Criminal Rule 49.1 and Bankruptcy Rule 9037. Appellate Rule 25 was amended to incorporate the new privacy directive. The rules can be found at *www.uscourts.gov/rules/congress0407.htm.*

The new rules for civil, criminal, and bankruptcy courts require that case files show only the last four digits of a person's financial account or Social Security number; only the year, not date, of someone's birth; and only the initials, not name, of persons known to be minors.

This approach is consistent with the 2003 Judicial Conference policy that has required those redactions to be made by those who submit documents to the courts.

The Conference policy had exempted Social Security cases from public availability online. Civil Rule 5.2 adds immigration cases. Such cases are available to the public but cannot be remotely accessed electronically. Civil Rule 5.2 treats immigration cases in the same fashion, which is a change in Conference policy.

"When the Judicial Conference privacy policy was developed, the Immigration Service did not express a concern," said Judge Lee Rosenthal (S.D. Tex.), chair of the Conference Committee on Rules of Practice and Procedure. "During the rule-making process, which took place a few years later, we had the benefit of the work on the Conference privacy policy. The Department of Justice, on behalf of the Immigration Service, voiced serious concerns about providing public remote electronic access to immigration cases."

> *"No one can predict all the issues that will arise from public remote electronic access to case filings..."*

Immigration cases are similar to Social Security cases in that the cases usually include extensive administrative records. As Rosenthal noted, "These records are often full of sensitive, highly personal information. The most obvious example is medical records. Because of the volume of the records and the extent to which they are made up of such personal information, it is not feasible to use redaction to protect privacy. The rules recognize these practical problems and do not require the parties to redact personal identifier information in these cases."

Rosenthal added: "Because these filings will remain unredacted, it seemed prudent to keep them off the Internet, where they can be easily searched."

Although Social Security and immigration cases still will be available to the public at the courthouse, prohibiting online access "balances our long-standing commitment to keeping our case files public with the need to protect privacy in the age of computers," Rosenthal said.

The rule does allow parties and their lawyers online access to Social Security and immigration cases. "Any other person may have electronic access to the full record at the courthouse, but may have remote electronic access only to the docket maintained by the court, and an opinion, order, judgment, or other disposition of the court, but not any other part of the case file or the administrative record," the new rule states.

Under the existing Conference policy, unexecuted search or

arrest warrants and unexecuted summonses, pretrial bail reports, pre-sentence investigation reports, documents containing identifying information about jurors or potential jurors, and sealed documents "shall not be included in the public case file." The new criminal rule is largely consistent with the policy.

The appellate procedure rule states that an appeal in a case that was governed by a privacy protection rule in district or bankruptcy court "is governed by the same rule on appeal."

The rules recognize the discretion district and bankruptcy judges have to order additional redaction or the sealing of documents "if necessary to protect private or sensitive information that is not otherwise protected."

"No one can predict all the issues that will arise from public remote electronic access to case filings or how that will impact on litigation in the long run. The Rules Committee will carefully monitor the rules, to assess how they operate in practice and whether further changes or additions are necessary," Rosenthal said. "We hope that judges will let us know of problems they encounter, and we welcome suggestions for improvement and refinement."

Access to Plea Agreements

Another Judicial Conference committee, the Court Administration and Case Management (CACM) Committee, is contemplating whether it will recommend that the Conference adopt a policy restricting public Internet access to plea agreements in criminal cases.

The study has its roots in a December 2006 letter the Conference received from the Justice Department's Executive Office for U.S. Attorneys, seeking to exclude all plea agreements from criminal case records available on the Judiciary's Public Access to Court Electronic Records (PACER) system.

"We are witnessing the rise of a new cottage industry engaged in republishing court filings about cooperators on websites such as www.whosarat.com for the clear purpose of witness intimidation, retaliation, and harassment," the letter said.

Sealing individual plea agreements and related materials is not a viable solution, according to the Justice Department. "The very fact that PACER's electronic docket reflects the filing of a cooperator's plea agreement—even if sealed—threatens to compromise the physical security of cooperating defendants in criminal cases. This is because for anyone with Internet access, a PACER account, and a basic familiarity with the criminal docketing system, the notation of a sealed plea agreement or docket entry in connection with a particular defendant is often a red flag that the defendant is cooperating with the government," the letter said.

Some district courts took action on their own. For example, the Eastern District of Pennsylvania adopted a protocol in which only docket information, not content, of all plea and sentencing documents is available on PACER. Public inspection of the documents is allowed at the district's courthouses, however.

From early September to late October 2007, the CACM Committee sought public comment on both the privacy and security implications raised by the Justice Department and potential policy alternatives.

More than 60 comments—from judges, court employees, lawyers, journalists, and others—yielded a broad spectrum of advice. Nearly one-third of the comments came from private citizens.

Chief Judge Michael McCluskey (C.D. Ill.) was among those who supported the Justice Department proposal.

"Our court has previously adopted a rule to restrict public Internet users or PACER users from having access to plea agreements or other documents in criminal cases identifying a person who has cooperated with law enforcement investigations," he said. "However, our local rule does not limit public access to plea agreements and other documents not under seal at the various courthouses through the Central District of Illinois. These documents are available for public inspection at the various clerk's offices."

Chief Judge Harvey Bartle III (E.D. Pa.) outlined his court's efforts to date to prevent witness intimidation, and said his court should be given the authority "to continue with our protocol, and that we, as well as other courts, be allowed at this time to experiment."

Rob Ansley, clerk of court for the District of North Dakota, said his court recently adopted a policy "we believe will alleviate these concerns."

In cooperation with the U.S. attorney's office and the federal public defender's office, that district "developed a procedure to file all plea agreements as public (unsealed) documents, sanitized by the drafter (federal prosecutors) of any references to cooperation. All pleas are accompanied by a sealed document — 'plea supplement.' The sealed plea supplement contains either a cooperation agreement or a statement that no agreement exists. To the Internet public, every plea in North Dakota will appear identical," Ansley said.

New Privacy *continued on page 9*

objections, and hearings that did not exist prior to the Act. Judges report spending more time analyzing new issues created by the Act, making a decision, and reporting it to the bar through written opinions, orders, or instructions.

Q: The Bankruptcy Committee is engaged in a project with the Federal Judicial Center to develop a new case-weighting formula for use in evaluating the need for new and existing judgeships. What is the status of this project?

A: Detailed information on judicial time spent on cases and other judicial activities had been collected from two-fifths of bankruptcy judges before being halted when the President signed the new Act. The Bankruptcy Committee decided to suspend the project in May 2005 at the end of the reporting period for the second of five groups of judges in anticipation that the Act would dramatically change the nature of bankruptcy judges' work, and that the resulting case weights would not accurately reflect the judicial resources necessary to process bankruptcy cases and proceedings.

At its June 2007 meeting, the Committee decided to resume the case weighting study by April 1, 2008. The Committee believes that resuming the study during that time period should result in reliable and valid measures of judicial work under the new Act because the courts will have had sufficient experience with cases filed under the Act and filing patterns will likely have normalized. The Committee will also conduct the next additional judicial needs survey of bankruptcy courts in the fall of 2008.

Q: How has the new bankruptcy law impacted bankruptcy clerks' office staffing levels?

A: The Bankruptcy Committee has been especially concerned about the impact of the Act on clerks' office staffing. There is abundant evidence from docket activity and case files demonstrating that the changes mandated by the Act have significantly increased the work in clerks' offices that is required to process a bankruptcy case. Until a new work measurement formula is in place for clerks in fiscal year 2009, it is not clear to what extent the additional work per case offsets the reduction in filing levels.

Since we will not have a new formula until 2009, fiscal year 2008 is shaping up to be a transition year. Increased filings and continued careful management by bankruptcy clerks (as evidenced by the maintenance of a significant vacancy rate), coupled with what looks to be a good budget for the upcoming year, should allow bankruptcy courts to maintain current on-board staffing levels. The Bankruptcy Committee will continue to stay informed on the staffing issues and weigh in on the new formula for 2009.

Q: The Bankruptcy Committee continues to examine proposed enhancements to the Case Management/Electronic Case File System (CM/ECF) that will directly benefit the work of bankruptcy judges, and the need to explore options for the next generation of the bankruptcy courts' automated case management system. What is the status of these efforts?

A: At its June 2007 meeting, the Bankruptcy Committee received reports from the Administrative Office concerning both of these topics, which are vital to the future effectiveness of CM/ECF not only for bankruptcy judges, but for all bankruptcy court personnel.

The AO reported on its efforts to obtain suggestions from a designated group of bankruptcy judges concerning how to improve CM/ECF for judges and chambers staff. The 17 judges who were contacted provided the AO with approximately 200 suggestions, including ideas related to improving navigation throughout the system, integrating order processing functionality within the system, and providing comprehensive report creating capability. The AO is in the process of organizing the suggestions and will present them to these same judges for prioritization. Once the judges have prioritized the suggestions, they will be forwarded to the Bankruptcy CM/ECF Working Group, which will make efforts to include several of the suggestions in future releases of CM/ECF.

Beyond improving CM/ECF in the short run, the Committee is also keenly interested in making certain that definite plans are in place to provide for the next generation of automated case management for the bankruptcy courts. For several years, CM/ECF has provided the bankruptcy courts greatly enhanced functionality that has benefited users within the Judiciary, including judges, and has also been a great tool for external

users, such as the bar and parties in bankruptcy cases. Notwithstanding its success, CM/ECF as we know it today is being overtaken by advances in technology. The Committee wants to make certain that all that can be done is being done to take advantage of technological advances so that the bankruptcy courts' automated case management system can be as efficient and effective as possible, which could very well require a very different system. The AO reported to the Committee that similar views and concerns were also expressed in letters received by the AO from the Bankruptcy Clerks Advisory Group and the National Conference of Bankruptcy Clerks. The AO has created an *ad hoc* group that includes bankruptcy judges and clerks to examine what should be done to assure that the system used by our bankruptcy courts is as advanced as possible. That is certainly a good first step in a process that may take some time to accomplish.

The Bankruptcy Committee has asked the AO to report again on these efforts at the Committee's January 2008 meeting. The Committee wants to be sure that all appropriate progress is being made, and to find out if there is anything else the Committee can do to focus attention on these vital efforts to keep our technology current and efficient.

We look forward to working with the IT Committee, chaired by Judge Thomas I. Vanaskie (M.D. Pa.), in these efforts.

Q: As chair, what are your goals and/or projects for the Bankruptcy Committee?

A: I hope to continue on the fine course charted by our wonderful past chair, Judge Marjorie Rendell (3rd Cir.), who reached out to all segments of the bankruptcy system to assure that it is reasonably and appropriately funded, responsive to the needs of users of the system, and focused on the future as the system evolves under BAPCPA. Our Committee will embark on a new and focused approach to long range planning for the bankruptcy system. The information we gather from existing projects—to update the case-weights for evaluating judgeship needs, develop new staffing formulae for bankruptcy administrators and clerks, increase the efficiency of bankruptcy courts through use of enhanced technology, and streamline the entire bankruptcy fee structure—will greatly assist us in this work.

"The work of bankruptcy judges and court staff on a per-case basis has increased substantially under the 2005 Act compared to their work under the prior bankruptcy law."

New Privacy *continued from page 7*

Judge John Tunheim (D. Minn.), who chairs the CACM Committee, said it "has been following the comments closely and will likely consider policy changes at its December meeting. We expect that any policy changes would also be reviewed by the Criminal Law Committee before submission to the Judicial Conference in March."

"I expect the committee will consider all the suggestions made, and make suggested policy changes that will appropriately balance legitimate security concerns with the need to allow public access to our court system," Tunheim said.

He added: "It is clear that threats to cooperating defendants are real, and disclosure of cooperation agreements can both affect a defendant's personal security and affect a willingness to continue to provide substantial assistance. At the same time, plea agreements are often the only record of how criminal cases are resolved. The public surely has an interest in knowing how criminal cases are resolved."

A summary of comments received is at http://www.privacy.uscourts.gov/2007comments.htm.

eJuror Aimed at Making Jury Service More User Friendly

As federal courts continue working to make jury service as positive an experience as possible, a planned website will allow prospective jurors to complete qualification questionnaires and obtain relevant reporting information online.

The new technology, called eJuror, is an enhancement to the courts' Jury Management System (JMS) that will save time and money for both the courts and those citizens contacted about jury service. It is anticipated that eJuror will be available to federal district courts sometime in 2008.

"With the web page, jury participants will be provided 24-hour service without requiring additional court staff time," said David Williams, an attorney-advisor in the Administrative Office and JMS co-project manager.

Some federal courts are ahead of the curve, such as the Eastern District of Virginia in Norfolk, where the number of people who respond to jury questionnaires online has grown each year the technology has been used.

A majority of districts use a two-step process in which a questionnaire is mailed out before a jury summons, while courts using a one-step process mail the questionnaire and summons at the same time. In both one-step and two-step courts, eJuror will give a prospective juror the option of responding to the qualification questionnaire online.

Once qualified, prospective jurors in two-step courts can answer questions for a summons online. For all courts, jurors can request a deferral, excusal, or partial excusal online as well.

(A partial excuse can be available if prospective jurors cannot serve the full term of their service due to business travel, schooling, or some other personal reason.)

In both one-step and two-step courts, prospective jurors can access their reporting status through the eJuror application. That status will be viewable on a separate page via an easily accessible link.

Among other reporting information, prospective jurors may be told, "You are expected to appear," or "You are postponed to a date on or after . . .," or "You are not required to report."

Also available online will be an exit survey, which will be used to measure an eJuror user's experience with the application and the process as a whole. And eJuror will be able to provide documented proof of jury service, required by some employers.

Russian Supreme Court Justice Tours Federal Judiciary

This fall, the Library of Congress' Open World program brought together (left to right) Administrative Office Director James C. Duff, Justice Yuriy Ivanovich Sidorenko of the Supreme Court of the Russian Federation and Chairman of the Council of Judges of the Russian Federation, and Judge Robert H. Henry (10th Cir.), chair of the Judicial Conference Committee on International Judicial Relations.

The Open World program brings small delegations of leaders from Eurasia to the United States to see American-style democracy in action. While in Washington, DC, Justice Sidorenko met with Chief Justice John G. Roberts, Jr. and Justice Ruth Bader Ginsburg, laid a wreath on the grave of Justice William H. Rehnquist, and met with current and former members of the Judicial Conference International Judicial Relations Committee. After leaving DC, Sidorenko was hosted in Peoria, Illinois, by Judge Michael Mihm (C.D. Ill.), in Oklahoma City, Oklahoma, by Henry, and in Las Vegas, Nevada, by Judge Lloyd George (D. Nev.).

New FJC Website Launched

The Federal Judicial Center introduced its new intranet website, *http://cwn.fjc.dcn/*, for Judiciary users last month. The site's design makes it easier to find products and services, gives access to the Center's many resources, while adding flexibility and room to grow. Look for information by subject or by audience, under New and Noteworthy, or by collections. There's also a message from Judge Barbara J. Rothstein, FJC Director, who urges users to take the online survey, feedback that will help further improve the website.

Long-Term Change *continued from page 5*

monitored and may be visited at home, work, or in the community at any time by their probation officer. They may be required to undergo drug testing, or mental health or substance abuse treatment. Offenders must conform to thirteen standard conditions of supervision that require them to work regularly, support their dependents, refrain from excessive use of alcohol, notify their probation officer of any change in residence or employment, not associate with anyone convicted of a felony, and pay any fines or restitution imposed by the court, among other conditions of release. If a probation officer feels more supervision is needed, they have alternatives.

"For example, at the time of sentencing the court may impose a condition for drug treatment," said Keeler. "But if an offender under supervision is using drugs, and substance abuse treatment is not a condition of their supervision, we can petition the court to modify the offender's conditions of supervision for drug treatment as a way to assist the offender."

"We do know who is a higher risk for committing crimes and we can focus resources on them," explains Melissa Cahill, a probation officer in the Eastern District of Missouri. "We know what kinds of interventions are successful." Cahill, who has a PhD. in clinical psychology, chairs the Research Committee of the American Probation and Parole Association.

Most offenders successfully complete their terms of supervision. Of the 48,881 offenders whose post-conviction supervision cases were closed in the 12-month period ending June 30, 2007, 72 percent finished their terms of supervision and completed their integration back into society. But 28 percent, or 13,737 offenders, had their terms of supervised release, probation, or parole revoked.

For offenders who violate their terms of supervision, the court may extend the term of supervision and/or modify the conditions of supervision. Interim sanctions may be employed. "If a certain type of treatment isn't working, we'll try some other kind of treatment," said Keeler. "A technical violation of the terms of supervision may not necessarily send an offender back to prison. But a felony conviction for new criminal conduct usually means automatic revocation of supervision."

Of the revoked cases of post-conviction supervision in the 12-month period ending June 30, 2007, 57 percent were for technical reasons, which generally meant the offender had violated one of the standard conditions of supervision. Over 4 percent were revocations because of an offender's conviction while under supervision for a minor offense, such as drunk driving, disorderly conduct, petty theft or a traffic violation. And 38 percent of the revocations were due to an offender's involvement in, or conviction for a new major offense, including absconding from custody, arrest, or another charge or conviction with a sentence of more than 90 days of imprisonment or more than a year of probation.

"Most officers do everything they possibly can—without endangering the community—to keep the offender in the community," said Cahill. "Effective intervention is preferred."

"Revocation is the last resort," agrees Chief Probation Officer David Keeler. "With probation, we try to get offenders to live a law abiding life. We believe a person has the ability to change. And we can help them do that."

JUDICIAL MILESTONES

Appointed: Roslynn R. Mauskopf, as U.S. District Judge, U.S. District Court for the Eastern District of New York, October 19.

Appointed: Scott W. Dales, as U.S. Bankruptcy Judge, U.S. Bankruptcy Court for the Western District of Michigan, October 5.

Appointed: Guy R. Humphrey, as U.S. Bankruptcy Judge, U.S. Bankruptcy Court for the Southern District of Ohio, October 2.

Appointed: Gary S. Austin, as U.S. Magistrate Judge, U.S. District Court for the Eastern District of California, October 12.

Appointed: Robert B. Jones, Jr., as U.S. Magistrate Judge, U.S. District Court for the Eastern District of North Carolina, October 12.

Appointed: Michael A. Shipp, as U.S. Magistrate Judge, U.S. District Court for the District of New Jersey, October 15.

Elevated: U.S. Bankruptcy Judge Nancy C. Dreher, to Chief Bankruptcy Judge, U.S. Bankruptcy Court for the District of Minnesota, succeeding U.S. Bankruptcy Judge Gregory F. Kishel, September 25.

Resigned: U.S. Magistrate Judge Philip M. Pallenberg, U.S. District Court for the District of Alaska, October 4.

Retired: U.S. Bankruptcy Judge Thomas F. Waldron, U.S. Bankruptcy Court for the Southern District of Ohio, September 30.

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